

NO. 48590-7-II

---

**STATE OF WASHINGTON COURT OF APPEALS FOR DIVISION II**

---

**JOHN WORTHINGTON,**

Appellants

v.

**WESTNET,**

Respondents

FILED  
COURT OF APPEALS  
DIVISION II

2016 AUG 4 AM 9:10

STATE OF WASHINGTON

BY \_\_\_\_\_ DEPUTY

---

**APPELLANT'S 2<sup>ND</sup> AMENDED OPENING BRIEF**

---

John Worthington  
4500 SE 2<sup>ND</sup> PL.  
Renton WA.98059

**ORIGINAL**

## TABLE OF CONTENTS

I. INTRODUCTION.....	1-3
II.ASSIGNMENTS OF ERROR.....	4-5
A. Issues Pertaining To Assignments of Error.....	5-7
III. STATEMENT OF THE CASE.....	7-13
IV.ARGUMENT.....	13-59
A. Worthington Met Summary Judgment Standard.....	13-19
B. WestNET Violated PRA legal Standard.....	19-21
C. The trial court erred when it failed to grant Worthington's request for penalties under the PRA.....	21-22
D. Worthington's Motion to Reconsider should have been granted.....	22-23
E. The trial court erred when it ruled the WestNET Interlocal agreement contained public records procedures for WestNET.....	23-25
F. The trial court erred when it ruled WestNET was non-entity not subject to suit.....	25-28
G. The trial court erred when it ruled the actual operational Structure of WestNET did not subject them to the PRA's purview.....	28-32
H. The trial court erred when it failed to rule WestNET was barred by judicial, and collateral estoppel, res judicata, and horizontal stare decisis, from arguing they are a non-entity not subject to suit, after appearing in court as WestNET.....	32-38

I. The trial court erred when it ruled Worthington was required to resort to unpublished public records procedures for WestNET.....	38-39
J. The trial court erred when it ruled the Plaintiff's Motion to Strike and sanctions should not be granted.....	39-42
K. The trial court erred when it ruled a settlement agreement between Worthington and Kitsap County was valid cause for dismissal under a summary judgment without an evidentiary hearing.....	42-46
L. If WestNET is non-entity, the trial court erred when it did not rule the State of Washington is the party of interest.....	46-49
M. A Declaratory Judgment pursuant to RCW 7.24 is not required under the PRA.....	49-50
N. Only basic allegations of violations of the PRA are required in the complaint.....	50
O. The trial court erred when it ruled Case No. 14-2-00474-7 collaterally estopped Worthington.....	50-51
P. WestNET should have published WestNET PRA procedures just like other jurisdictions have.....	52
Q. The trial court erred when it ruled the Declaration of Ione George did not show there were genuine issues of material fact.....	51-58
1. Lack of Personal Knowledge.....	55-57
2. Hearsay Is Inadmissible.....	57
3. The Kitsap County Prosecutor is the responsible party.....	57-59
R. Worthington's Rule 60 b Motion should have been granted.....	58-59
V. CONCLUSION.....	59-60
DECLARATION OF SERVICE.....	61

## TABLE OF AUTHORITIES

### State Cases

Adams v. King County. 164 Wn.2d 640, 647 (2008).....	52
Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 538 -39, 160 P.3d 13 ( 2007).....	35
Atherton Condo Ass’n v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990).....	14, 53
Bartley-Williams v. Kendall, 134 Wn. App. 95, 98, 138 P. 3d 1103 (2006).....	34, 41
Bates v. Grace United Meth. Church, 12 Wn. App. 111, 115 529 P.2d 466 (1974).....	14
Beaver v. Estate of Harris, 67 Wash.2d 621, 409 P.2d 143 (1965).....	44
Brinkerhoff v. Campbell, 99 Wash.App. 692, 696, 994 P.2d 911 (2000).....	45
Cano-Garcia v. King County, 168 Wn. App. 223, 249, 277 P.3d 34 (2012), review denied, 175 Wn.2d 1010 (2012).....	54
Davis v. Dep’t of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999).....	18
DEA/Tahoma Narcotics Enforcement Team v. 2001 BMW X5, 2011 Wash. App (2011).....	37
Drake v. Smersh, 122 Wn. App. 147, 151, 89 P.3d 726 (2004).....	22
Dunlap v. Wayne, 105Wn.2d 529, 535, 716 P.2d 842 (1986).....	56
Escamilla v. Tri-City Task Force, 100 Wn. App. 742,(2000).....	37



Frank Coluccio Constr. Co. v. King County, 136 Wn. App. 751, 762, 150 P.3d 1147 (2007).....	46
Holaday v. Merceri, 49 Wn. App. 321, 324, 742 P.2d 127, review denied, 108 Wn.2d 1035(1987).....	22
In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).....	22
In re Marriage of Schneider, 173 Wash.2d 353, 363,268 P.3d 215 (2011).....	17
Int'l Ultimate, Inc., v. St. Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 745, 87P.3d 774 (2004).....	55
Jacobsen v. State, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977).....	13, 14, 52
City of Lakewood v. Koenig, 160 Wn. App. 883, 896, 250 P.3d 113 (2011).....	20
LaPlante v. State, 85 Wn.2d 154, 158, 531 P.2d 299 (1975).....	13
Lavigne v. Green, 106 Wash.App. 12, 16, 23 P.3d 515 (2001).....	45
Livingston v. Cedeno. 164 Wn.2d 46, 52, 186 P.3d 1055(2008).....	19
Nationwide Mut. Fire Ins. Co. v. Watson, 120 Wash.2d 178, 187,840 P.2d 851 (1992).....	44
Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 253, 884 P.2d 592 (1994).....	20
Retail Clerks Hlth. & Welfare Trust Funds v. Shopland Supermarket, 96 Wn.2d 939, 949, 640 P.2d 1051 (1982).....	45
Salas v. Hi-Tech Erectors, 168 Wn.2d 664, 668-69, 230 P.3d 583 (2010).....	16
Sanders v. State, 169 Wn.2d 827,846,240 P.3d 120 (2010).....	20

Snohomish Reg'l Drug Task Force v. Real Prop. Known as 20803 Poplar Way, Lynnwood, Wash., 150 Wn. App. 387 (2009).....	37
Soter v. Cowles Pub'g Co., 162 Wn.2d 716, 750, 174 P.2d 60 (2007)...	20
State v. Delgado, 148 Wn.2d 723, 733, 63 P.3d 792 (2003).....	18
State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003).....	18
State v. Payne, 117 Wn. App. 99, 106, 69 P.3d 889 (2003).....	55
State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).....	16
Tri-City Metro Task Force v. Contreras, 129 Wn. App. 648, (2005).....	37
Zink v. City of Mesa, 162 Wn. App. 688, 256 P.3d 384 (2011).....	20

### **Related State Cases**

Worthington v. WSP 152 Wn. App. 1047 (2009).....	1, 8
Worthington v. Washington State Attorney General's Office, 2010 WL 1576717 (W.D. Wash. April 20, 2010).....	8
Worthington v. WestNET 179 Wn. App. 320 P.3d 721 (2014).....	11
Worthington v. WestNET, 182 Wn.2d 500, 506, 341 P.3d 995 (2015).....	12, 40

### **Federal Cases**

Seller Agency Council, Inc. v. Kennedy Center For Real Estate Ed., 621 F.3d 981, 986 (9th Cir. 2010).....	45
--	----

### **Miscellaneous**

David K. DeWolf, Keller W. Allen, & Darlene B. Caruso, Washington Practice; Contract Law and Practice: § 5.12, at 92 (2012-13 Supp.).....	46
---	----

## **Statutes**

RCW 7.24.....	49
RCW 36.27.040.....	57
RCW 69.50.505.In Passim	
RCW 69.50.505(4).....	27
RCW 69.50.505 (e).....	34
RCW 42.56.030.....	20
RCW 42.56. In Passim	
RCW 42.56.010 (1).....	19, 38
RCW 42.56.040.In Passim	
RCW 42.56.040 (1).....	17, 19, 23, 39
RCW 42.56.040 (2).....	17, 39
RCW 42.56.210 (3).....	20
RCW 42.56.550 (4).....	21
RCW 42.56.580.....	24

## **Court Rules**

CR 17 (a).....	6, 47
CR 56 (c).....	13, 51
CR 56 (e).....	56

## **Evidence Rules**

ER 602.....	54, 55
ER 801(c).....	56
ER 802.....	56
ER 803 (a) (1).....	57
ER 804 (b) (1).....	57
ER 901(a).....	55

## **Rules of Professional Conduct**

RPC 3.3 (d).....	7, 22, 52, 57
RPC 5.1.....	7, 22, 57

## **I. INTRODUCTION**

This is an action for disclosure of public records and for costs, fees, and penalties in regard to the West Sound Narcotics Enforcement Team's. (WestNET) deliberate failure to reasonably disclose records, silent withholding of public records, failure to provide an adequate privilege log, and failure to disclose records in a timely fashion without unreasonable delay.

Worthington's pursuit of the records started with Worthington v. Washington State Patrol in Superior Court for Thurston County. In that case, Worthington was told the U.S. Department of Justice was the party of interest that conducted the task force operations under a Justice Assistance Grant (JAG) and had all the records. The Washington State Court of Appeals upheld that decision.<sup>1</sup> Worthington later discovered that the DEA did not raid him and that WestNET did. Worthington then sought WestNET records. Worthington filed and withdrew one PRA<sup>2</sup> suit prior to filing a second, because he had no authentic proof that Kitsap County was involved in his raid. Worthington sued the member jurisdictions that he could identify in Pierce County Superior court.<sup>3</sup> Kitsap County, rather than intervene as Kitsap County to defend a "Kitsap County public records

---

<sup>1</sup> Worthington v. WSP, 152 Wn. App. 1047 (2009)

<sup>2</sup> Pierce County Superior Court case No. 11-2-09032-4

<sup>3</sup> Pierce County Superior Court case No. 11-2-13236-1

process,” appeared as WestNET. Worthington then sued WestNET. The Washington Supreme Court eventually remanded after the trial court and Court of Appeals ruled WestNET could not be sued because they were a non-entity and were not subject to suit.

On remand, Worthington alleged Kitsap County impersonated WestNET, but the trial court ruled Kitsap County was obligated to defend WestNET. WestNET has continued claiming that; WestNET is a “non-entity”; “just a collaborative agreement”; “Kitsap County is the records keeper for WestNET; WestNET does not hire employees”; “WestNET creates, generates, and retains no investigative records of its own”; “Reports of collaborative WestNET investigations are recorded and preserved as Kitsap County Sheriff’s Office reports”; “Requests for reports of WestNET investigations are responded to by the Kitsap County Sheriff’s Office”, and made “scriveners” errors when they appeared as WestNET in seizure forfeiture hearings.

Worthington respectfully argues the evidence he has provided refutes these statements and shows that WestNET is indeed a legal entity and an agency of the State of Washington that is subject to the PRA outright, but failed to publish its PRA procedures for Worthington to resort to and also failed to comply with the terms of a state contract requiring them to.

Prior to this case, Worthington signed a settlement with Kitsap County for failing to comply with the PRA in 2006. Worthington filed a tort claim for that and other issues in the summer of 2008 and the settlement in question was entered into. Prior to that settlement, in the summer of 2007, Worthington had filed a tort claim with Kitsap County in preparation of filing a lawsuit against the affiliate Jurisdictions of WestNET and TNET. A year later, Worthington filed a tort claim that was the instigation and cause for the settlement agreement signed in June of 2008. The 2007 tort claim was denied and never settled. Regardless, the settlement with Kitsap County is a red herring because Worthington never settled with WestNET the agency or any other WestNET jurisdiction, and Kitsap County cannot “bind other parties.” Furthermore, Kitsap County waived the settlement when it appeared as WestNET.

Dismissing this action frustrates the language of the PRA by adversely affecting Worthington by requiring him to resort to the *wrong* PRA procedures for WestNET, in violation of RCW 42.56.

Worthington respectfully argues the WestNET jurisdictions acted in bad faith by claiming WestNET was not an agency or a legal entity, despite knowing they were both. Worthington alleges WestNET did so intentionally in order to frustrate Worthington and the PRA.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in granting Summary Judgment for WestNET.
2. The trial court erred in denying Worthington's motion for summary judgment and awarding him penalties and fees under the PRA.
3. The trial court erred in denying Worthington's Motion to Reconsider.
4. The trial court erred when it ruled the WestNET Interlocal agreement contained public records procedures for WestNET.
5. The trial court erred when it ruled the actual operational structure of WestNET did not subject it to the PRA's purview.
6. The trial court erred when it ruled WestNET was not barred by collateral estoppel, res judicata, and horizontal stare decisis, from arguing they are not subject to suit after requesting judgments and appearing in several courts as WestNET.
7. The trial court erred when it ruled Worthington was required to resort to unpublished public records procedures for WestNET in violation of RCW 42.56.040 (2).
8. The trial court erred when it ruled the Plaintiff's Motion to Strike and sanctions should not be granted.
9. The trial court erred when it ruled Kitsap County was the party of interest for PRA cases.
10. The trial court erred when it ruled WestNET was a "non-entity and not an agency subject to the PRA.
11. The trial court erred when it ruled Worthington failed to transfer a previous public records case in Pierce County Superior Court to Kitsap County.
12. The trial court erred when it ruled a settlement agreement between Worthington and Kitsap County was valid cause for dismissal under a summary judgment without an evidentiary hearing, and after waiving the agreement.
13. The trial court erred by not ruling CR17 (a) prevented a dismissal and allowed the State of Washington to be the party of interest.
14. The trial court erred by ruling the Declaration of Ione George pursuant to RPC 3.3 presented no issues of material fact.
15. The physical appearance of WestNET in seizure forfeiture actions claiming to be WestNET was cause to grant Worthington's rule 60 b motion.



#### **A. Issues Pertaining To Assignments of Error.**

1. WestNET should not have prevailed on Summary Judgment?
2. Worthington should have prevailed on Summary Judgment and been granted fees and penalties under the PRA.
3. WestNET interlocal agreement did not contain PRA procedures, and was it an error of law and fact for the trial court to extract PRA procedures from the seizure forfeiture language, and tort claim liability language of the WestNET interlocal agreement.
4. The PRA required by law, a public records officer, and other published information to guide the public in PRA requests.
5. WestNET became a legal entity subject to suit when they appeared in court to request and receive checks in the name of WestNET from banks and multiple courts and then cashed those checks.
6. The actual operational structure of WestNET subjected it to the PRA's purview, because WestNET has office staff and employees located at a "headquarters," that stores records in a secret "headquarters", under the command and control of the Washington State Patrol, operating in accordance with two drug task force manuals, and because WestNET had been operating for 12 years in a legal capacity in seizure forfeitures, where defendants did not have to serve all WestNET jurisdictions.
7. WestNET was barred by judicial and collateral estoppel from arguing it was non entity not subject to suit, once WestNET appeared in court cases from 1997 until 2015 and stated to three different courts of record that it was a legal entity, to which bank account seizures could be made and judgments could be collected. Or when WestNET appeared in the previous Pierce County PRA case<sup>4</sup> involving Worthington, requesting and being granted relief.
8. Worthington did not have to resort to WestNET's unpublished PRA procedures, after WestNET affiliate jurisdictions failed to publish its PRA procedures for WestNET in the interlocal agreement, the only binding agreement between parties.
9. Kitsap County impersonated WestNET after claiming to the Washington State Supreme court it could not represent WestNET.
10. The trial court erred when it ruled that Kitsap County did not have to intervene in the suit in order to make its arguments that Kitsap County was the party of interest or responsible PRA contact for this case.

---

<sup>4</sup> Pierce County Superior court case No.11-2-13236-1

11. Kitsap County could not release WestNET records without third party approval, absent enough PRA language to allow Kitsap County to release the police reports of the other WestNET affiliate jurisdictions.
12. Kitsap County could not be the PRA administering agency in this case without specific PRA language in the WestNET interlocal agreement. The trial court err when it failed to rule a third party notification was required by Kitsap County in order to release WestNET records to Worthington or any other records requestor, and be the PRA contact and records agent for WestNET.
13. The State of Washington the real party of interest, because the Washington State Patrol supervises WestNET by contract. The trial court erred when it did not rule the State of Washington was the real party of interest pursuant to CR 17 (a).
14. WestNET is subject to the PRA outright because WestNET admitted during this case it was an agency? Did the trial court err when it did not rule that WestNET was subject to the PRA outright, because the statute states that any, all and every agency are subject to the PRA..
15. Worthington did comply with the order to transfer the venue to Kitsap County in case No. 11-2-13236-1, when Worthington transferred the identical case to Kitsap County Superior Court when he filed against WestNET, within the 60 day time period ordered by the Pierce County Superior court. Worthington complied with the order to transfer the venue because WestNET was a defendant and because the other jurisdictions acquiesced to the transfer of only WestNET, when they failed to file any timely objections.
16. The settlement agreement between Worthington and Kitsap County was null and void because Kitsap County misrepresented the facts to Worthington at the time of that settlement, and is it irrelevant because Kitsap County cannot bind the other parties or because Kitsap County waived the settlement by responding for WestNET. The trial court err when it upheld the settlement agreement in question without holding an evidentiary hearing in order for the trier of fact to determine if the settlement was still valid after the facts central to the settlement agreement had changed or whether there were "fair dealings".
17. The trial court erred when it ruled the Declaration of Ione George pursuant to RPC 3.3 did not present any issues of material fact, because four court venue's, in King, Pierce, Kitsap, and Mason counties, already ruled that a legal entity named WestNET was entitled to judgments and because three of those court venues then wrote checks or transferred funds directly to WestNET. The claim of scrivener's errors could not hold water once Kitsap County Prosecutors told a judge they were WestNET and then

after the Kitsap County Sheriff cashed and disbursed checks written to WestNET to all other jurisdictions? Claiming a scrivener's error could not unwind those courts' decisions. The claim of scrivener's errors could not be used at all because they are made without personal knowledge and because there were no declarations provided. An RPC 5.1 have been filed instead of an RPC 3.3, because the elected prosecutor is responsible for the acts of his deputies.

18. The trial court erred in the rule 60 b motion when it failed to acknowledge the transcripts of WestNET physically appearing in court claiming that they were WestNET, and the transcripts refuted the "scriveners errors"

### **III. STATEMENT OF THE CASE**

On February 5, 2010, Worthington made email request for public records to WestNET. On February 5, 2010, Kitsap County responded by email. **CP 65**

On February 5, 2010, Kitsap County responded initially by email by to the February 5, 2010 request and then by letter from Dave White, a WestNET policy board member. Kitsap County stated the documents requested could not be sent pursuant to RCW 10.97.050, but Worthington could view the documents in person at the Kitsap County Sheriff's office. In this response, no privilege log was provided to Worthington. **CP 64-65, 67**

On March 26, 2010, Worthington went to the Kitsap County Sheriff's office to view the documents, and was presented a stack of papers to view. Worthington requested to copy the documents but was refused permission

to do so. Worthington requested a copy of one page of the document. Lt. Collings informed Worthington that she would check with her supervisor and get back to Worthington later that day. At 4 pm on March 26, 2010, Lt. Collings sent a copy of the one page that Worthington requested by email. Still no privilege log had been provided to Worthington. Worthington made a PRA request for metadata which no redaction log was provided. **CP 66**

In October of 2010, Worthington became aware of a version of the West Net General report of the raid on his residence on January 12, 2007. Worthington alleges that Kitsap County and Affiliate Jurisdictions had not allowed him to view all of the documents sent to Kitsap County and West Net Affiliate Jurisdictions regarding the raid on his residence. Worthington alleges that Kitsap County and West Net Affiliate Jurisdictions had sent all available documents of the January 12, 2007 raid on Worthington to the tort claims attorneys in a federal court case<sup>5</sup> involving the other participating agencies of West Net, during the same time period that Worthington had made his request. **CP 213-227**

---

<sup>5</sup> Worthington v. Washington State Attorney General's Office, 2010 WL 1576717 (W.D. Wash. April 20, 2010) No. C10-0118 JLR.

In late December of 2010, the Washington State Patrol<sup>6</sup> sent Worthington a 226 page West Net general report, after he had proved that they had the documents sent to them as part of a tort claims investigation by the Office of Financial management.<sup>7</sup> In this 226 page report were NCIS agent Salazar's reports of the raid which were not shown to Worthington on March 26, 2010. From December 2010 to May of 2011, Worthington renewed his efforts<sup>8</sup> to get a complete disclosure of the records of the January 12, 2007 raid on his residence which he requested on February 5, 2010.<sup>7</sup> On March 6, 2011, Worthington was sent a response to those renewed attempts to obtain full disclosure of the February 5, 2010 public records request. This response showed that Worthington was not sent a raid plan, and emails to and from the U.S. Attorney's office. This response also shows that the tort claims attorneys for the other West Net participating agencies in the federal court case were sent these documents.<sup>9</sup> This response shows more documents Worthington should have been sent in response to the February 5, 2010 request. On May 23, 2011, Worthington sent a public records request directly to

---

<sup>6</sup> WSP claimed they had no WestNET records and stated in court the USDOJ had all the records because they claimed it was a DOJ action. Worthington v. WSP 152 Wn. App. 1047 (2009)

<sup>7</sup> CP 33

<sup>8</sup> CP 68

<sup>9</sup> CP 213-227

“WestNET” administrative assistant Kathy Chittenden, which was responded to by Kitsap County for Dave White a WestNET board member from Kitsap County. Steve Sarich sent an identical request on May 24, 2011. **CP 72-76**

On July 28, 2011, Kitsap County sent an email and letter with a privilege log to Worthington indicated they Would release 539 pages of documents which should have been released in response to several previous requests, which indicated they previously did not comply with the Washington State public records act request Worthington made on February 5, 2010. **CP 73**

On July 29, 2011, Kitsap County informed Steve Sarich that in reply to his mirror request for records of WestNET Affiliate Jurisdictions investigation file W07-001, that 748 records would be released to him, which indicated that Worthington did not get all the documents contained in investigation file W007-001. On August 9, 2011, the defendant Kitsap County allowed Worthington and Sarich to view the documents in the sheriff’s office, but redacted nearly the entire raid/safety plan. **CP 75**

On August 15, 2011, Worthington challenged a redaction of several pages which relied on RCW 42.56.240 (1), and asked for the documents to be released without redactions. On August 18, 2011, the Kitsap County defendants responded they would not redact the documents identified in

the redaction log. **CP 78-86**

On September 12, 2011, Worthington requested a complete copy of an email that was disclosed on August 9, 2011. Kitsap County responded on September 21, 2011, and requested 30-45 days to respond. Kitsap County never responded and Worthington had to go to the City of Bonney Lake to get a complete copy of the email he was requesting. Worthington alleged the document released by Kitsap County had been tampered with to conceal the other recipients of the email. **CP 89-92**

On September 1, 2011, Worthington filed a PRA case on the WestNET affiliate jurisdictions prior to this case and it was ordered to be transferred to Kitsap County. WestNET appeared in the case without being named a defendant, and along with the other affiliate jurisdictions requested the case be dismissed because WestNET was not a legal entity or in the alternative be transferred to another venue (Kitsap County.) On December 20, 2011, Worthington transferred the case to Kitsap County and served WestNET prior to 60 days from the last ruling by Judge Hickman issued on October 28, 2011. WestNET moved for a 12 (b) (6) dismissal, alleging WestNET was not an entity subject to suit. The trial court agreed with WestNET and the case was dismissed. On January 28, 2014, and on March 11, 2014, in Worthington's Motion to reconsider, the Court of

Appeals upheld the decision<sup>10</sup>. However, On January 22, 2015, the Washington State Supreme Court remanded the case back to the trial court.<sup>11</sup>

On July 31, 2015, Worthington filed for Summary Judgment<sup>12</sup>. Worthington also filed a Motion to Strike and for CR 11 sanctions and for fees under RCW 4.84.185, which was heard September 25, 2015. On September 25, 2015, the trial court denied the Motion to Strike, for CR 11 sanctions and for fees under RCW 4.84.185, and denied Worthington's Motion for Summary Judgment. The trial court then granted WestNET's Motion for Summary Judgment on September 25, 2015. The orders were entered on October 19, 2015.

On October 20, 2015, Worthington filed a motion to reconsider and submitted more evidence that WestNET had been appearing in court cases to seize bank accounts, and requesting judgments from defendants in the name of WestNET. Worthington submitted court documents and checks written to WestNET.

On October 27, 2015, WestNET responded with a declaration pursuant

---

<sup>10</sup>Worthington v. WestNET 179 Wn. App.(2014) COA II, # 43689-2.(WestNET was not a separate legal entity.)

<sup>11</sup> Worthington v. WestNET, 182 Wn.2d 500, 506, 341 P.3d 995 (2015). Washington State Supreme Court, # 90037-0.

<sup>12</sup> WestNET also moved for summary judgment on 5-8-2015, but Worthington requested and was granted a continuance. **CP 523**. Both motions were heard on September 11, 2015.



to RPC 3.3. On November 16, 2015, the trial court set a hearing for November 30, 2015 and took in more evidence and heard additional oral argument. West Net claimed it made “scriveners errors” for 12 years<sup>13</sup>, but decided to cash the checks written to WestNET anyway after presenting itself to the court as WestNET. At the hearing, WestNET admitted it was an agency.<sup>14</sup>

On January 8, 2016, the trial court ruled there were no issues of material fact submitted at the hearing. On January 22, 2016, the trial court denied the motion to reconsider without requesting a responding brief. On February 5, 2106 Worthington files this timely appeal of the trial court’s orders.

#### **IV. ARGUMENT**

##### **A. Worthington Met Summary Judgment Standard**

Summary Judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56. Summary judgment is designed to do away with unnecessary trials when there is no genuine issue of material fact *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975). “A material fact is one upon which

---

<sup>13</sup> **CP 2056-2067**

<sup>14</sup> WestNET admitted it was an agency on November 18, 2015. Partial VR November 18, 2015, Partial **VR 3-7**.

the outcome of the litigation depends.” *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977).

The burden is on the moving party to demonstrate there is no genuine issue of material fact and, as a matter of law, summary judgment is proper. *Jacobsen*, 89 Wn.2d at 108. If the moving party satisfies its burden, then the non-moving party must present evidence demonstrating material facts are in dispute. *Atherton Condo Ass’n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). The non-moving party must “set forth specific facts showing there is a genuine issue for trial.” *LaPlante*, 85 Wn.2d at 158. A non-moving party may not oppose a motion of summary judgment by nakedly asserting there are unresolved factual questions. *Bates v. Grace United Meth. Church*, 12 Wn. App. 111, 115, 529 P.2d 466 (1974).

Worthington met his burden, because there are no genuine issues of material fact whether WestNET is a “non-entity” that can be sued. WestNET became an entity subject to suit when it showed up in in Pierce County case No. 11-2-13236-1, filed briefs requesting the venue be transferred if the court first did not dismiss the case. The trial court in Pierce County Superior Court refused to dismiss the PRA case on the grounds that WestNET was not an entity subject to suit,<sup>15</sup> and granted

---

<sup>15</sup> This makes total sense considering Pierce County Superior Court had been granting judgments to WestNET since 2009.

defendant WestNET the relief it sought by transferring the venue to Kitsap County and awarded WestNET legal fees. Neither WestNET nor its co-defendant affiliate jurisdictions appealed that order and it became final. Worthington filed suit on WestNET in this case only after it had appeared in Pierce County Superior court case No. 11-2-13236-1.

Worthington alleges that Kitsap County impersonated WestNET in the Pierce County case and in this case, because if they would have intervened as Kitsap County, they would have waived the settlement agreement relied upon by the trial court to dismiss this case. Worthington also alleges that Kitsap County appeared as WestNET in order to continue hiding critical records from Worthington, while several court cases were ongoing. Withholding these records was vital in the efforts to continue to hide the truth that the DEA never did the raid on Worthington, and also very critical in hiding the fact that Kitsap County did have an employee involved in the raid, which was a fact central to issues in the settlement with Kitsap County. **CP 37-62**

WestNET has also appeared in court to request that bank accounts be frozen and seized in the name of WestNET.<sup>16</sup> WestNET has also accepted checks from those bank accounts in the name of WestNET, cashed them

---

<sup>16</sup> **CP 810,823**

and then disbursed the funds to WestNET entities. In addition, WestNET prosecutors requested judgment for WestNET in four different court venues. Judgments have been granted to WestNET in King, Pierce, Mason and Kitsap County and checks have been written to WestNET since 2002.<sup>17</sup> Those checks, received as late as 2015, were also cashed and disbursed to WestNET affiliate jurisdictions. Finally, WestNET has been appearing in seizure forfeiture hearings pursuant to RCW 69.50.505, in oral argument that property should be forfeited to “WestNET and WestNET alone.”<sup>18</sup> As a matter of common law and under the legacy of collateral estoppel, res judicata and horizontal stare decisis, Worthington is entitled a judgment in his favor.

The trial court abused its discretion because its ruling WestNET was not barred by collateral and judicial estoppel, res judicata, and horizontal stare decisis from claiming it was non-entity not subject to suit is manifestly unreasonable and untenable, considering 12 years of WestNET agency activity as a legal entity. A trial court abuses its discretion when its decision “is manifestly unreasonable or based upon untenable grounds or reasons.” *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 668-69, 230 P.3d

---

<sup>17</sup> CP 1194-1241

<sup>18</sup> CP 812-820

583 (2010) (quoting *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997)).

Worthington also meets his burden, because as a matter of law he is not required to resort to public records procedures for WestNET because they were not published in the WestNET Interlocal agreement, which is the only binding agreement between the parties.<sup>19</sup>

Worthington also meets his burden because RCW 42.56.040 requires by law that public records procedures be published for guidance of the public. If public records procedures are not published to guide Worthington, as a matter of law, Worthington is not required to resort to any such unpublished public records procedures. As a matter of law under RCW 42.56.040 (1) Worthington was entitled to a judgment in his favor, and the trial court erred when it ruled otherwise. Worthington would be too adversely affected by the failure of WestNET to publish its public records procedures, and as a matter of law under RCW 42.56.040 (2), Worthington was entitled to a judgment in his favor. The trial court erred when it failed to give effect to the plain meaning of RCW 42.56.040. “In the absence of ambiguity, we will give effect to the plain meaning of the

---

<sup>19</sup> CP 249

statutory language." *In re Marriage of Schneider*, 173 Wash.2d 353, 363, 268 P.3d 215 (2011).

Here, the trial court failed to give effect to the plain meaning of RCW 42.56.040, and that statute was rendered superfluous. "We also interpret statutes to give effect to all language in the statute and to render no portion meaningless or superfluous." (See *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999)). And we avoid a reading that produces absurd results. *Id.* (quoting *State v. Delgado*, 148 Wn.2d 723, 733, 63 P.3d 792 (2003)). In this case, the absurd result would be allowing WestNET affiliates to avoid the requirements of the PRA, and enable a court to decide those requirements 6 years after the fact, when they should have been published for Worthington to resort to in the first place. The seizure forfeiture process language in the WestNET interlocal agreement does not comply with the PRA, and the trial court erred when it relied on the WestNET seizure forfeiture process to be WestNET's published PRA procedures.

Worthington also meets his burden, because WestNET functions as a record keeping center and is subject to the PRA, because it is a separate office they themselves describe as "Headquarters", with an office

supervisor, and office manager.<sup>20</sup> These task force members fax

WestNET records to requestors. **CP 213-227, CP 836-889.**

WestNET has admitted in the hearing on November 30, 2015, that it is an agency.<sup>21</sup> Once WestNET admitted it was an agency, the clear language of the PRA should have been enforced on them. The trial court erred as a matter of law under RCW 42.56.010 (1), when it failed to rule Worthington was entitled a judgment in his favor because WestNET met the criteria in RCW 42.56.010 (1) outright.

WestNET did not meet its burden of showing that there are no genuine issues as to any material facts and that they are entitled to a judgment as a matter of law. The breach of contract claim for a settlement agreement Kitsap County waived to defend a “Kitsap County records process”, supported by hearsay declarations did not provide the required evidence to show WestNET is not an agency for the purposes of the PRA. The trial court erred when it ruled otherwise.

**B. WestNET Violated PRA legal Standard.**

---

<sup>20</sup> The WestNET task force manual and the WSP task force manual clearly indicate task force personnel maintain task force records. The record shows the WestNET records being faxed from the office supervisor to Kitsap County Sheriff to apply redactions. **CP 835.**

<sup>21</sup> WestNET admitted it was an agency on November 18, 2015. Partial VR November 18, 2015, Partial **VR 3-7.**

"The primary purpose of the PRA is to provide broad access to public records to ensure government accountability." *Livingston v. Cedeno*, 164 Wn.2d 46, 52, 186 P.3d 1055 (2008). The legislature stated clearly that the people "do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." LAWS OF 1992, ch. 139, § 2 (codified at RCW 42.56.030). When an agency withholds or redacts records, its response "shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld." RCW 42.56.210 (3); see PAWS II, 125 Wn.2d at 270. The purpose of the requirement is to inform the requester why the documents are being withheld and provide for meaningful judicial review of agency action. See PAWS II, 125 Wn.2d at 270; *Sanders v. State*, 169 Wn.2d 827, 846, 240 P.3d 120 (2010). An agency may not "silently withhold" a public record "because it gives requestors the misleading impression that all documents relevant to the request have been disclosed." See *Zink: II*, 162 Wn. App. at 71 L. "The agency's failure to properly respond is treated as a denial of records." *Soter v. Cowles Pub'g Co.*, 162 Wn.2d 716, 750, 174 P.2d 60 (2007). "Prevailing against an agency requires an order that withheld records must be disclosed." *City of Lakewood v. Koenig*, 160 Wn. App. 883, 896, 250 P.3d 113 (2011).



Here, WestNET violated the PRA by denying Worthington access to the majority of the requested records without including a statement of the specific statutory exemptions and a brief explanation of how the exemptions apply (exemption statement). WestNET violated the PRA when it did so. WestNET offered no arguments for the alleged silent withholding so Worthington should have prevailed on his claims under the PRA. WestNET was an agency and had been functioning as one for years and only pretended not to be an agency to frustrate the PRA.

**C. The trial court erred when it failed to grant Worthington's request for penalties under the PRA.**

WestNET created an agency, operated as one for over a decade, and had to admit during this case that it had in fact created and functioned as an agency despite claiming for 5 years that it was just collaboration. WestNET was subject to the PRA outright and should have been held in violation of the provisions of RCW 42.56.550 (4). Worthington should have been awarded all costs, including reasonable attorney fees, incurred in connection with nearly 6 years of legal action in this case. In addition, the court should award Worthington the highest possible amount under the act starting on March 5, 2010, because WestNET acted in bad faith to aggravate the penalty to its highest amount, by silently withholding records it was later found to have in its possession at the WestNET

“headquarters.” WestNET’s seizure forfeiture process created a legal entity to collect and disseminate cash, property, fines and fees, which were collected by three Superior courts and tracked by the JIS system within the Administrative Office of the Courts which released quarterly reports of monies owed to WestNET, not member jurisdictions. The trial court erred when it ignore the seizure forfeiture trail and failed to apply the PRA to WestNET the agency.<sup>22</sup>

**D. Worthington’s motion to reconsider should have been granted.**

Worthington’s motion to reconsider was not only cause for a declaration pursuant to RPC 3.3 (d), it should also have been cause for a declaration under RPC 5.1. No reasonable person<sup>23</sup> could have taken the view that scrivener’s errors were to blame for 12 years of checks cashed in the name of WestNET. “The decision to grant or deny a motion for reconsideration for abuse of discretion.” *Drake v. Smersh*, 122 Wn. App. 147, 151, 89 P.3d 726 (2004). “A trial court abuses its discretion only if its decision is manifestly unreasonable or rests on untenable grounds or reasons.” *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). “An abuse of discretion exists only if no reasonable person would have taken

---

<sup>22</sup> WestNET admitted it was an agency on November 18, 2015. Partial VR November 18, 2015, Partial VR 3-7.

<sup>23</sup> The Kitsap County Superior court has a conflict of interest having dismissed the previous *Worthington v. WestNET* complaint, while collecting money for WestNET in judgment and sentencing documents, an entity the same court ruled was a “non-entity” and was not subject to suit.

the view adopted by the trial court.” Holaday v. Merceri, 49 Wn. App. 321, 324, 742 P.2d 127, review denied, 108 Wn.2d 1035(1987). The trial court’s failure to actually give weight to the evidence of physical court appearances as WestNET, and, in court verbal declarations to be WestNET, along with the act of cashing WestNET checks, are manifestly unreasonable, rests on untenable grounds and reasons and the trial court’s orders should be reversed.

**E. The trial court erred when it ruled the WestNET Interlocal agreement contained public records procedures for WestNET.**

The trial court erred extracting WestNET public records procedures from the interlocal agreement using the following language. “Each agency agrees to hold harmless, defend, and indemnify the other parties in the Task Force in any action arising from the negligence of the employee of that agency including all costs of defense including attorney's fees.”<sup>24</sup>

While this language may have applied to a tort or civil rights claim, it does not meet the criteria established by the PRA, because the PRA has specific requirements under RCW 42.56.040 (1) which reads in relevant part:

- (1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public: (a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain

---

<sup>24</sup> CP 246. September 25, 2015 VR 16-17

information, make submittals or requests, or obtain copies of agency decisions;

However, the WestNET interlocal agreement sections cited by the trial court contained none of the above criteria, and the trial court made a mistake of law when it ruled otherwise. As shown above the WestNET interlocal agreement is not the WAC, and does not name any employees and does not describe a method whereby the public may obtain WestNET information, nor where the public may make submittals to, nor where the public can obtain agency decisions. In addition, the Kitsap County Prosecutors office has been tasked to represent member agencies in real & personal property forfeitures and drug nuisance abatement cases.<sup>25</sup> Furthermore, the central office of WestNET is not publically known, so it is impossible to go to the office where the WSP supervises the WestNET office manager Kathy Chittenden.

The WestNET interlocal agreement also does not name a public records officer which is required by RCW 42.56.580 which reads in relevant part:

- (1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter.

---

<sup>25</sup> CP 244

- (2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation.
- (3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance within the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business,
- (4) posting on its internet site, or including in its publications.

The WestNET interlocal agreement contains none of the above. That is why the City of Bremerton sent out third party notices,<sup>26</sup> before it disseminated WestNET records to Worthington.<sup>27</sup> Any other jurisdiction including Kitsap County would have to do the same because the affiliates do not grant release of its records by other parties anywhere in the interlocal agreement. Furthermore, Kitsap County cannot bind any affiliate jurisdictions to PRA decisions.<sup>28</sup>

As shown above, the sections and subsections of the WestNET interlocal agreement relied upon by the court, and the other sections not relied upon by the court do not contain the requirements outlined in RCW

---

<sup>26</sup> **CP 949-960**

<sup>27</sup> Worthington has obtained WestNET records from Kitsap County, Bremerton and the State of Washington. There is no evidence that Bremerton and the Attorney General went through the Kitsap County sheriff's office to get those records.

<sup>28</sup> **CP 243**

42.56, and the trial court made an error of fact and of law, when it ruled otherwise.

**F. The trial court erred when it ruled WestNET was a non-entity not subject to suit.**

WestNET is not just a “collaborative agreement”, WestNET has been telling courts it has existed as an entity to which checks should be written to since 1997. WestNET has been cashing checks and disbursing funds to WestNET entities not just Kitsap County.

The WestNET County Prosecutors created a judgment and sentence court document<sup>29</sup> which requested a judgment from WestNET defendants. The judgment and sentence documents were then signed by a judge and collections were made by three courts.<sup>30</sup> Once a partial or full judgment was obtained, the courts then wrote checks to WestNET via the Kitsap County Sheriff’s office who cashed the checks and deposited the WestNET money in a WestNET fund to be split among *all* affiliate jurisdictions.<sup>31</sup> In addition, WestNET would then attempt its own seizure

forfeiture process in an administrative hearing pursuant to RCW

---

<sup>29</sup> **CP 1170-1180**

<sup>30</sup> WestNET has been in the Washington State JIS system for over a decade.

<sup>31</sup> The JIS system maintained by the AOC keeps track of the payments as WestNET not under WestNET member agencies. The State treasurer’s office also keeps track of WestNET seizures as WestNET.

69.50.505 (e), if the defendants did not move the matter to be transferred to a Superior court venue. When some defendants did move the hearings to Superior court and WestNET followed them to that venue, creating a legal entity for the purposes of obtaining WestNET forfeiture. None of the activity and information shown above has ever been considered by any court and this case would be a case of first impression. That impression would have to be that WestNET was a legal entity because it has already appeared in court since 1997 and has cashed millions of dollars' worth of checks written to WestNET, numerous ones sent by the courts. When they showed up as WestNET in criminal cases, they used the State of Washington in the caption not Kitsap County.

WestNET has continuously showed up in civil forfeiture cases and has been doing so for more than a decade. Because the transactions have been completed for so long, and have not been corrected, it is too late for WestNET to claim it was a "non-entity" making "scriveners errors" and the trial court erred when it ruled WestNET was a non- entity not subject to suit. The Appellate court should reverse the trial court and rule that WestNET is a legal entity and state agency for the purposes of the PRA, especially after claiming it was an "agency" that adhered to the

requirements of RCW 69.50.505. The defendants in those cases were only required to serve WestNET after the WestNET intent to seize notice was mailed out to them.<sup>32</sup> For over a decade WestNET defendants were not required to file their 45 day notices pursuant to RCW 69.50.505 (4), on all WestNET jurisdictions in order to contest seizures and forfeitures. Worthington should not have been required to serve all WestNET jurisdictions under the PRA, and WestNET the agency should have processed his PRA request in the same manner as they would have processed their civil forfeiture process.

**G. The trial court erred when it ruled the actual operational structure of WestNET did not subject them to the PRA's purview.**

WestNET has two operation manuals that describe how WestNET is structured administratively. In the Washington State Patrol Investigative Assistance Division (IAD) the manual titled Narcotic Enforcement Task Force Policy and Procedure Manual,<sup>33</sup> describes the office procedures for a task force like WestNET being supervised by WSP. On page 12 of the manual, it shows that the office manager “maintains files associated with seizures and forfeitures.” On page 14 of the manual’s administrative section the duties of the office assistant are

---

<sup>32</sup> These notices are a WestNET form signed by the WSP. CP 811-825.

<sup>33</sup> CP 111-141



to “Enter and track investigation records into computer databases”, and  
“assist the office manager in maintaining computer arrest records.”  
Clearly, Worthington’s seizure and forfeiture case would have been in  
possession of the WestNET office manager. In the WestNET Operating  
guideline manual<sup>34</sup>, the process is even clearer. On page 19 the manual  
instructs the investigative support assistant to “Maintain investigative  
files, enter and track investigation records into computer databases,  
maintains computer arrest records, seized property and evidence , and  
drug asset removals.” Clearly, the records Worthington requested were in  
the possession of WestNET and were being maintained by their  
investigative support assistant, Kathy Chittenden, who is also the  
WestNET office manager,<sup>35</sup> who would enter and track investigation  
records for WestNET. It is clear from the evidence that Chittenden faxed  
WestNET records on demand. **CP 839-840**. Some records were made  
available by the City of Bremerton who released the information after  
obtaining a third party release from Kitsap County, Poulsbo and the State  
of Washington. **CP 949-960**. The AG and WSP have also provided  
WestNET records to Worthington and its own state agencies.

---

<sup>34</sup> **CP 143-169**

<sup>35</sup> **CP 172-181**

The defendant has tried to make it look like Kitsap County generates and stores WestNET records at their offices at 614 Division St., but that is not how their process works. When WestNET records are sought, records requests are sent to Kathy Chittenden at an “undisclosed” location referred to as “headquarters”, Chittenden or the WSP supervisor then faxes the records to the Kitsap County Sheriff’s offices, the State of Washington or whoever the requesting agency or entity is. **CP 213-227, CP 836-889.**

No matter whom the request is made to initially, WestNET records are faxed to Kitsap County Sheriff’s office by Kathy Chittenden, or by the WSP supervisor, when WSP requests case files when the State of Washington needs a WestNET record. The WSP has its own separate administrative process that overlaps the WestNET process through the Investigative Assistance Division’s Administrative Unit. When WSP needs a WestNET document Traci D. Gurley faxes it to the requester through the IAD supervisor assigned to supervisor of the drug task force.

### **CP 33**

In 2008, in response to a PRA request from Worthington, Kitsap County sent a document drafted by Kitsap County Sheriff Steve Boyer stating that WestNET would be a medical marijuana records center for Kitsap County. This response shows that Worthington’s medical marijuana case would have been in the possession of WestNET, not Kitsap

County when he requested the records regarding the medical marijuana raid on his residence. **CP 231-238**

The seizure forfeiture trail in the motion to reconsider shows the WSP supervisor signing WestNET documents<sup>36</sup> to initiate the seizure and forfeiture and despite the defendants attempts to portray this document as a Kitsap County document, the State Patrol officer is the signing the document for the Sheriff because the Sheriff has agreed to be placed under the command and control of the WSP in the WSP participation grant also signed by the rest of the affiliate jurisdictions. That contract clearly states “Has fiscal and management controls, will provide availability of all records upon request. **CP 577 CP 548-577**

Finally, when you factor in WestNET’s court appearances in seizure forfeiture and in judgment and sentence documents in three different court venues as an entity of the State of Washington, and the fact that they requested checks to be written to WestNET in a court case initiated by the State of Washington, the operational structure of WestNET clearly was that of a separate legal entity and agency of the State of Washington<sup>37</sup> for criminal and civil cases. **CP 1170-1180**

---

<sup>36</sup> **CP 811-825, CP 1020, CP 1138-1145**

<sup>37</sup> There are only 6 multi-jurisdictional drug task forces supervised by the WSP (CP 576) under the WSP participation grant. WestNET is one of

The trial court erred when it ruled the actual operational structure of WestNET did not subject it to the PRA's purview outright as a state agency or board. The ruling that WestNET was operating under the "umbrella" of Kitsap County was destroyed by the evidence showing the member agencies signing documents and appearing as WestNET not Kitsap County. The defendant did not provide a single WestNET seizure forfeiture document done in the name of the "umbrella" agency Kitsap County, and could only muster a nefarious "scriveners errors" argument that should never have been taken seriously by the trial court.

Worthington should not have been required to serve all WestNET jurisdictions under the PRA, and WestNET the agency should have processed his PRA request in the same manner as they would have processed their civil forfeiture process. The trial court's ruling is manifestly unreasonable and untenable and should be reversed.

**H. The trial court erred when it failed to rule WestNET was barred by judicial and collateral estoppel, res judicata, and horizontal stare decisis from arguing they are a non-entity not subject to suit after appearing in court as WestNET.**

---

these. Other drug task forces insert the WSP under the local jurisdiction. Those task forces would be considered local "board", "local" or "other local public agencies" under the PRA.

Because WestNET already joined an identical PRA lawsuit with other WestNET affiliate Jurisdictions in Pierce County<sup>38</sup>, and because the other affiliate jurisdictions did not object to WestNET coming forward or being transferred to Kitsap County, nor appeal the order transferring WestNET to Kitsap County, the order is now final and WestNET jurisdictions are now barred from re-litigating the issue. Kitsap County Superior court was able to rule whether WestNET violated the PRA. Since WestNET has offered no argument as to whether it violated the PRA. Worthington should prevail on his claims that WestNET violated the PRA.

Worthington has argued both offensively and defensively that collateral estoppel applies. Worthington has argued this in his response to WestNET's Motion for Summary Judgment and in his own motion for Summary Judgment. WestNET should have been barred from re-litigating the issue of whether they were an entity subject to suit. The trial court should have determined Worthington has established all four elements for collateral estoppel and has met the burden of proof supporting a ruling to bar WestNET from once again arguing it is non-entity not subject to suit. The trial court erred when it did not rule the Pierce County Superior

---

<sup>38</sup> CP 94-108

Court<sup>39</sup> had to decide WestNET was a legal entity before transferring WestNET to the Kitsap County Venue.

Worthington has also found numerous documents showing WestNET has appeared in multiple courts in multiple venues as WestNET, and agency of the State of Washington. Worthington has also found numerous documents showing WestNET has appeared numerous times in front of hearing examiners under RCW 69.50.505 (e).<sup>40</sup> WestNET is judicially and collaterally estopped from claiming they are non-entity not subject to suit, because they have made a pattern and practice of showing up as WestNET, the Washington State Agency, to apply for search warrants, seize property and have it forfeited to “WestNET and WestNET alone.” So far Worthington has found documents showing WestNET appeared as plaintiff in case No. 75-8282 in King County District Court, a litigant in Case No.07CV0465 in Mason County Superior Court, and also gone before many hearings under RCW 69.50.505 (e), before a hearings examiner as WestNET the Washington State agency, not Kitsap County the “umbrella.”. Many court documents start out with WestNET in the caption and contain the words “comes now WestNET.” **CP 812-820.** WestNET has been appearing in court as far back as 1997 (**CP 774**), has

---

<sup>39</sup> Pierce County Superior Court Case No. 11-2-13236-1.

<sup>40</sup> **CP 1798-1824**

long since acquiesced to being a legal entity and is estopped from claiming otherwise.

“Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.” *Bartley- Williams v. Kendall*, 134 Wn. App. 95, 98, 138 P. 3d 1103 (2006). “Courts consider whether the earlier position was accepted by the court, and whether assertion of the inconsistent position results in an unfair advantage or detriment to the opposing party.” *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538 -39, 160 P.3d 13 (2007). Three core factors guide a trial court's determination of whether to apply the judicial estoppel doctrine: (1) whether a party's later position is “clearly inconsistent” with its earlier position; (2) whether judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled; and (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. These factors are not an exhaustive formula and additional considerations may guide a court's decision. Application of the doctrine may be inappropriate when a party's prior position was based on inadvertence or mistake. (See *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 536, 160 P.3d 13, 14, 2007 Wash. LEXIS 386, \*1 (Wash. 2007).

Because WestNET verbally claimed to be WestNET in court then requested banks write checks, and requested courts to collect fines and fees in the name of WestNET, then cashed and dispersed those checks, all arguments of inadvertence are out the window. Here, the first criteria is met because WestNET's position in the instant case claiming to be a "non-entity" is clearly inconsistent with its position the last 10 plus years in their applications for search warrants, legal proceedings for property seizures, sentence and judgment documents, and forfeiture hearings cases in the name of Washington State before multiple courts in multiple venues. In addition, multiple courts in multiple venues have now accepted all positions which meet the second criteria and have misled the original court.

WestNET created an agency by interlocal agreement<sup>41</sup>, and, has a "headquarters" at a separate location staffed by WestNET affiliates, under the command and control of the WSP in the WSP participation grant. It was not an inadvertent mistake to file court documents as WestNET in order to obtain search warrants, seize property and have banks, other financial institutions and three different court venues write checks to WestNET.<sup>42</sup> Many Kitsap County Prosecutors, Washington State Patrol

---

<sup>41</sup> See section 1 d of the WestNET interlocal agreement CP 244

<sup>42</sup> CP1207-1278



employees, other affiliate WestNET members, repeatedly signed their names as WestNET on legal documents. The documents Worthington has obtained show that WestNET has seized, defaulted or released hundreds of thousands of dollars' worth of property as WestNET the agency, and even had checks written to them in the name of WestNET for \$18,718.53<sup>43</sup> from U.S. Bank and another for \$6,272.43 from Columbia Bank.<sup>44</sup> It is certain more checks have been written by banks to West Net. In fact, it has become common practice for drug task forces to file as civil litigants to seize property. (Snohomish Reg'l Drug Task Force v. Real Prop. Known as 20803 Poplar Way, Lynnwood, Wash., 150 Wn. App. 387 (2009), Escamilla v. Tri-City Task Force, 100 Wn. App. 742,(2000), Tri-City Metro Task Force v. Contreras, 129 Wn. App. 648, (2005), and DEA/Tahoma Narcotics Enforcement Team v. 2001 BMW X5, 2011 Wash. App (2011).These are all civil cases involving RCW 69.50.505.

It is clear that the multi-Jurisdictional Drug Task forces are appearing as legal entities to seize property and are signing legal briefs as legal entities. These task forces want to be able to proceed as civil litigants to seize property in order to split the proceeds per the interlocal agreements, yet claim they are "non-entities" and not agencies while being immune

---

<sup>43</sup> CP 823

<sup>44</sup> CP 809-810

from suit at the same time. Since they obviously have been appearing as state agencies for criminal and civil seizure forfeiture proceedings, they have long since acquiesced to being state agencies subject to the PRA and legal entities subject to suit. Otherwise, the courts would have to unwind years of convictions, property seizures, fines and fees, and then refund checks and pay restitution to those wrongly court ordered to pay criminal restitution to a non-entity and show up to defend a civil proceeding initiated or represented by a “non-entity.” When WestNET verbally claimed to be WestNET in court and the WestNET checks were cashed and dispersed, all arguments of inadvertence are out the window.

The trial court erred when it failed to rule WestNET was bared by judicial, and collateral estoppel, res judicata, and horizontal stare decisis, from arguing it was not an agency and a non-entity.

**I. The trial court erred when it ruled Worthington was required to resort to unpublished public records procedures for WestNET.**

RCW 42.56.040 (1) requires offices, agencies, boards and other entities described in RCW 42.56.010 to public their public records procedures to guide the public. RCW 42.56.040 (1) reads in relevant part:

(1) Each state agency<sup>45</sup> shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

- (a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;
- (b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- (c) Rules of procedure;
- (d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
- (e) Each amendment or revision to, or repeal of any of the foregoing

RCW 42.56.040 (2) unambiguously states that Worthington is not required to resort to WestNET's public records procedures after the fact because they were not published or displayed. RCW 42.56.040 (2) reads in relevant part:

“Except to the extent that he or she has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed”

As shown above in RCW 42.56.040 (2), Worthington is not required to resort to WestNET's PRA procedures after the fact and is adversely

---

<sup>45</sup> WestNET jurisdictions have consistently filed as the State of Washington in court cases and not as member jurisdictions or under the Kitsap County “umbrella”. They simply could not be a local agency, because the WSP is in command and NCIS is part of the task force.

affected by the trial court's rulings that require him to resort to any PRA procedures not so published or displayed. Making him go back to file on other jurisdictions would adversely affect Worthington and violate the intent of RCW 42.56.040 (2). Worthington has played this PRA shell game long enough and at a tremendous cost. The trial court erred when it did not enforce the PRA on the State Agency WestNET.

**J. The trial court erred when it ruled the Plaintiff's Motion to Strike and sanctions should not be granted.**

The trial court's ruling is also flawed because the argument that Kitsap County Prosecutor can represent WestNET is barred by judicial estoppel. WestNET is now estopped from changing its legal position again after the claiming the Kitsap County Prosecutor does not represent WestNET in a supplemental brief to the Washington State Supreme court earlier in this case as shown below:

[Of note, the agreement does not provide for the task force (e.g. WestNET to initiate forfeitures<sup>46</sup> or abatements; nor does it reflect that the Prosecutor's office would represent the task force.<sup>47</sup> (See Page 5, supplemental brief of respondent to the Washington State Supreme court)

---

<sup>46</sup> The record now shows this statement to be completely false and should be met with severe sanctions. The trial court was made aware of this statement but ruled Kitsap County could defend WestNET anyway.

<sup>47</sup> A position they and the court now have changed, but are judicially estopped from doing so.

As shown above, WestNET is judicially estopped from arguing the Kitsap County Prosecutor can now represent WestNET. They cannot change legal positions in a different legal proceeding in the same case.<sup>48</sup> Furthermore, in the same brief, WestNET argued Worthington sued the wrong party.<sup>49</sup> However, later on remand, when Worthington argued Kitsap County should have intervened instead of appearing as WestNET, Kitsap County as WestNET changed its legal argument in the same case again claiming they could represent WestNET<sup>50</sup>. The trial court erred by allowing Kitsap County to flip flop during the flimflam to represent WestNET in PRA matters after they have already argued they could not. "Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position." *Bartley- Williams v. Kendall*, 134 Wn. App. 95, 98, 138 P. 3d 1103 (2006).

Ione George of the Kitsap County Prosecutor's office should have intervened as Kitsap County to represent an alleged Kitsap County public

---

<sup>48</sup> WestNET argued Kitsap County published its PRA procedures and they were applicable. See Page 7, supplemental brief of respondent to Washington State Supreme court. *Worthington v. WestNET*, 182 Wn.2d 500, 506, 341 P.3d 995 (2015)

<sup>49</sup> See Page 7, supplemental brief of respondent to Washington State Supreme court *Worthington v. WestNET*.

<sup>50</sup> The Kitsap County Prosecutor's offices flip flopped again by claiming it could not represent WestNET when it denied service in case No. 15-2-02503-3, COA 489848.

records process performed by Kitsap County employees. George should have been sanctioned for filing court documents in the name of WestNET, when she knew her appearance was for Kitsap County interests and then admitted she could not represent WestNET. Worthington argues she did so in an attempt to prevent Kitsap County from waiving the settlement agreement with Worthington. Regardless, all of George's briefs on behalf of Kitsap County while impersonating WestNET should have been stricken, and the appellate court should award severe sanctions to Worthington and the courts.

**K. The trial court erred when it ruled a settlement agreement between Worthington and Kitsap County was valid cause for dismissal under a summary judgment without an evidentiary hearing.**

In June of 2006, Worthington filed a PRA request with Kitsap County looking for their use of forward looking Infra-red (FLIR). CP 493-497 Kitsap County Responded back claiming they did not have any documents. CP 498. Ultimately, Worthington made another request for the same records in 2008 and Kitsap County then released multiple FLIR<sup>51</sup> search warrants which should have been available in 2006. On April 22, 2008, Worthington wrote an email claiming the County was in violation of

---

<sup>51</sup> Forward Looking Infra-Red Imaging.

the PRA and requested penalties for 20 months.<sup>52</sup> On April 24, 2008, Kathy Collings of Kitsap County sent Worthington a form for damages which Worthington sent in to the Kitsap County Commissioners. **CP 499 - 500**. It was this claim that sat on the table when Mr. Abernathy and Mr. Worthington negotiated the terms of the settlement.

In 2008, Worthington assembled a series of federal contracts and other documents showing a bypassing of Washington State laws and usurping of local authority.<sup>53</sup> Those contracts were signed by the Kitsap County Commissioners. Worthington started contacting the Kitsap County Administration office about these contracts and was sent a tort claim form to the County Commissioners. On May 15, 2008, Worthington outlined his complaint and sent them by email to two County Commissioners. Worthington sent in his claim form to the Kitsap County Commissioners. WestNET has not provided that claim form or any tort Claim for 2008 to the Kitsap County Commissioners to the court. Worthington has provided a copy of the claim form for the Kitsap County Commissioners, and it is not the same as a claim for Risk Management cited by Kitsap County.

For over a year, Mark Abernathy, the Kitsap County's Risk Management official who negotiated the settlement, was crystal clear in

---

<sup>52</sup> **CP 496-498**

<sup>53</sup> **CP 505-506**

stating he could not settle WestNET matters. First of all, Worthington had not named a specific Kitsap County employee in the 2007 Risk Management Claim.<sup>54</sup> Second of all, the WestNET members that were named were not Kitsap County employees, and Kitsap County had no liability or authority to settle any claims for Roy Alloway, John Halsted and Fred Bjornberg. Kitsap County denied the 2007 tort claim. WestNET withholds that denial by Kitsap County. The settlement was not for the acts of Roy Alloway, John Halsted and Fred Bjornberg the tortfeasors identified, nor was it for the actions of Kitsap County employee Duane Dobbins who actually took part in the raid and seizure. Ione George relied upon hearsay and was never part of that negotiation and she provided the trial court cherry picked evidence from the record and did not provide the trial court with all the documents regarding that settlement. "Releases are contracts. As such, the general rule is that traditional contract principles apply." *Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wash.2d 178, 187, 840 P.2d 851 (1992). "Under contract law, a release is voidable if induced by fraud, misrepresentation or overreaching or if there is clear and convincing evidence of mutual mistake." *Watson*, 120 Wash.2d at 187,

---

<sup>54</sup> Worthington identified WSP employee Fred Bjornberg, Poulsbo employee John Halsted, and Bremerton employee Roy Alloway.



840 P.2d 851 (citing *Beaver v. Estate of Harris*, 67 Wash.2d 621, 409 P.2d 143 (1965)).

As shown above the settlement agreement was null and void once Worthington discovered the DEA did not conduct the raid and that WestNET did. Worthington was within his right to disavow the settlement. Ione George was not present at the settlement negotiations<sup>55</sup> and has provided cherry picked hearsay evidence in an attempt to trick the trial court into thinking a tort claim in 2007 had been settled when in fact it was denied and never settled. Worthington is protected by the clean hands doctrine from being subjected to the settlement obtained by deception and fraud. A litigant's unclean hands bar it from asserting equitable defenses. (See *Retail Clerks Hlth. & Welfare Trust Funds v. Shopland Supermarket*, 96 Wn.2d 939, 949, 640 P.2d 1051 (1982); *Seller Agency Council, Inc. v. Kennedy Center For Real Estate Ed.*, 621 F.3d 981, 986 (9th Cir. 2010)).

The fact is, the settlement does not mention WestNET and Kitsap County cannot bind other parties to any settlement agreements.<sup>56</sup> The dispute over the settlement agreement requires an evidentiary hearing and the issues should be decided by the trier of fact and not in a motion for

---

<sup>55</sup> Her testimony and declaration is hearsay and inadmissible under the rules of evidence.

<sup>56</sup> See section 3 c , page 4 of WestNET interlocal agreement. **CP 243.**

summary judgment. “We review a trial court's order enforcing a settlement agreement de novo if “the evidence before the trial court consisted entirely of affidavits and the proceeding is similar to a summary judgment proceeding.” *Brinkerhoff v. Campbell*, 99 Wash.App. 692, 696, 994 P.2d 911 (2000); (see also *Lavigne v. Green*, 106 Wash.App. 12, 16, 23 P.3d 515 (2001)). “But if there are disputed facts, a trial court may abuse its discretion if it enforces the settlement agreement without first holding an evidentiary hearing to resolve any disputed issues of fact.” *Brinkerhoff*, 99 Wash.App. at 696, 994 P.2d 911. “Whether a party has breached a contract is a question of fact.” *Frank Coluccio Constr. Co. v. King County*, 136 Wn. App. 751, 762, 150 P.3d 1147 (2007). “More generally, though, good faith is evaluated by an examination of the circumstances surrounding its application and the context in which it is asserted. Consequently, the determination of good faith and fair dealing is an issue for the trier of fact.” David K. DeWolf, Keller W. Allen, & Darlene B. Caruso, *Washington Practice; Contract Law and Practice*: § 5.12, at 92 (2012-13 Supp.).

The trial court abused its discretion when it failed to proceed with an evidentiary hearing on the issue of the settlement agreement, and it erred when it granted summary judgment based on the settlement agreement or any proceeding court case that did not hold an evidentiary hearing for the

trier of fact to settle disputed facts. This issue is a red herring because Worthington never made any agreements with WestNET the agency or another affiliate jurisdiction not to file suit. Essentially, the trial court ruled that Kitsap County could and did appear to defend WestNET as Kitsap County the agency. When it did so, Kitsap County waived any settlement agreements with Worthington in order to defend the “Kitsap County records process” under the “umbrella” of Kitsap County.

**L. If WestNET is a non-entity, the trial court erred when it did not rule the State of Washington is the party of interest.**

Once the WestNET affiliate Jurisdictions signed the Washington State Patrol (WSP) participation Grant, and gave command and control of WestNET to the WSP, the State of Washington became the true party of interest under CR 17 (a) for all lawsuits against WestNET. The WSP would have liability under respondeat superior. The WestNET affiliates waived the indemnity clause when they placed the WSP in charge of WestNET, because WestNET did not function independent of command and control. Furthermore it is a state contract with built in requirements to abide by the OPMA and PRA. The State of Washington failed to properly train, supervise and monitor the WestNET affiliates for compliance with its own state contract, a true benchmark under the doctrine of respondeat superior. In other words, since the affiliates failed to operate within the

requirements of the JAG employment contract (OPMA and PRA), the activity cannot be covered by the indemnity clause, which only covers proper conduct under employment. The above theory is confirmed, because the Task force was contractually obligated to abide by the PRA and OPMA as outlined in their contract with the Washington State Department of Commerce. **CP 565, 595**

Kitsap County could never be the administering agency for WestNET because the WSP has effectively commandeered the WestNET drug task force when they got all the WestNET affiliates to join the WSP Participation JAG Grant. Furthermore, the interlocal agreement does not have any language that shows Kitsap County is the PRA custodian or that the Kitsap County Prosecutor can bind all the parties. WSP is required to abide by the PRA in that grant and they obtained a release from the other jurisdictions to supervise WestNET. **CP 548**

Reading the WSP participation grant, the records are owned by the program and kept by a WestNET office manager at an undisclosed location . The WestNET office manager works for the WSP and Kitsap County, but WestNET council attempted to show by false affidavit that

Kitsap County Sheriff's office generates stores and disseminates records for WestNET.<sup>57</sup>

The WestNET JAG contract is essentially a nearly identically worded document which claims the records are co-owned by the U.S. DOJ and Washington State Department of Commerce.<sup>58</sup> Those records have been proven to be stored and disseminated by fax from a location described as "headquarters" where Kathy Chittenden and a WSP supervisor by the last name of Rodriguez work from. Despite that information now being on the record, WestNET council has by false affidavit asserted that the WestNET records are stored at the Kitsap County Sheriff's office.

Furthermore, as shown by both manuals, the Policy or Executive Board is the controlling entity of WestNET<sup>59</sup> not the Kitsap County Sheriff's office. The activity of WestNET is under a state contract controlled by a multi-jurisdictional board not by Kitsap County or its agencies. The City of Bremerton also had WestNET records and provided them to Worthington only after it had notified third parties of their intent to provide them to Worthington if they did not object. CP 949-960.

**M. A Declaratory Judgment pursuant to RCW 7.24 is not required under the PRA.**

---

<sup>57</sup> When Worthington later attempted to serve WestNET at 614 Division in a different case, they claimed WestNET was not at that location.

<sup>58</sup> CP 567

<sup>59</sup> CP 125, 156

Defendant WestNET has appeared to misclassify this action under the PRA as one under the Washington State Declaratory Judgment Act, RCW 7.24, because Worthington used the word “Declaration” in his request for relief. In addition, in the motion for summary judgment, Worthington incorporated the 1st amended complaint in his motion, making the motion for summary judgment under the PRA. In the event the court feels that a declaratory Judgment under the Declaratory Judgment Act is necessary, the court has discretion to provide that relief based on Worthington’s request for other relief in section 7.7<sup>60</sup> of the 1<sup>st</sup> Amended Complaint, which was tethered to the motion for Summary Judgment in section 2.1. CP 1-11.

**N. Only basic allegations of violations of the PRA are required in the complaint.**

The complaint gives notice of the basic allegation, such as “you drove your car in a negligent fashion and caused me injury.” The summary judgment can then address the specifics of how the person was negligent (going too fast, not paying attention, didn’t yield the right away, etc..).

WestNET’s arguments that Worthington should have outlined all PRA violations in the complaint or be barred from bringing new or more

---

<sup>60</sup> Plaintiff asks the Court to grant such other relief as the Court may find just and equitable.

specific violations of the PRA are unsupported by court rule or case law. If WestNET wanted more specific allegations about all PRA Violations that were going to be asserted they should have moved for a more definite statement. Having not moved for a more definite statement, WestNET is now stuck with the basic complaint, which properly alleges basic violations of the PRA.

**O. The trial court erred when it ruled Case No. 14-2-00474-7 collaterally estopped Worthington.**

Case no.14-2-00474-7 is now an unpublished opinion by the COA 463644 and it cannot be used as precedence. Worthington never made any agreements with WestNET the agency or any other affiliate jurisdiction. The trial court erred when it ruled Kitsap County could make settlement agreements for the other affiliate jurisdictions of WestNET the agency, because Kitsap County could not bind the other parties to any agreements.<sup>61</sup> Kitsap County waived the settlement agreement when it appeared as WetsNET to defend a “Kitsap County records process.” The trial court erred when it ruled everything was done under the Kitsap County umbrella<sup>62</sup> and its decision should be reversed.

---

<sup>61</sup> CP 472

<sup>62</sup> WSP signs most forms and supervises WestNET, and cannot be under the Kitsap County umbrella. Neither can the NCIS.

**P. WestNET should have published WestNET PRA procedures just like other jurisdictions have.**

Olympic Peninsula Narcotics Enforcement team (OPNET) did not seem to have a problem abiding by the PRA, in the only binding agreement between OPNET jurisdictions. The Clallam County Sheriff does not have to provide third party notices because the OPNET interlocal agreement complies with the PRA. CP 605-611

**Q. The trial court erred when it ruled the Declaration of Ione George did not show there were genuine issues of material fact.**

The Declaration admits WestNET has been appearing as an Agency in court cases to seize and accept forfeited property and there is now a genuine issue of material fact, or it is admissible evidence to support a ruling in favor of Worthington's Motion for Summary Judgment. As stated by the Washington Supreme Court, "Under CR 56(c), a court may grant summary judgment if the record presents no genuine issue of material fact and the law entitles the moving party to judgment." (See CR 56 (c); Adams v. King County. 164 Wn.2d 640, 647 (2008).

Worthington's allegation that WestNET is an Agency<sup>63</sup> subject to the PRA has been supported by the Declaration pursuant to RPC 3.3 (d) by virtue of the documents it has admitted were filed in other court cases.. The

---

<sup>63</sup> WestNET admitted it was an agency in the hearing on November 30, 2015 VR



admission in the Declaration pursuant to RPC 3.3 (d) only came after Worthington provided admissible evidence of WestNET Agency activity in previous court cases. “Bare assertions that a genuine material issue exists will not defeat a summary judgment motion in the absence of actual evidence.” (See *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997)).

Here, there is actual evidence of WestNET Agency activity and Kitsap County Deputy Prosecutor has admitted to the activity, so there were specific facts as to whether there was a genuine issue for trial, these facts are central to the case and are facts upon which the outcome of the litigation depends. “A material fact is one upon which the outcome of the litigation depends.” (See *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977)). The Declaration of Ione George pursuant to RPC 3.3 d admits there are material facts in dispute. (Whether WestNET is an Agency subject to suit) “The non-moving party must present evidence demonstrating material facts are in dispute”. *Atherton Condo Ass’n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). Worthington presented the evidence in the motion to reconsider and the Declaration of Ione George has admitted there is evidence that WestNET the Agency has already appeared in multiple seizure forfeiture court actions. In the alternative, there is now cause to grant Worthington’s Motion for Summary Judgment because it is now undisputed that WestNET has

operated as a Drug Enforcement Agency for seizure forfeiture purposes. WestNET is now judicially estopped from arguing it is not an Agency subject to suit, after appearing in multiple court venues the last ten years as WestNET and calling itself an agency in the proceedings. Looking deeper at what activity the Kitsap County Deputy Prosecutor is now admitting to, the court will see that WestNET not only appeared in multiple venues, it claimed it was an Agency that complied with the requirements under RCW69.50.505, and appeared as shown below:

The “**agency**” has shown it complied with procedural requirements to provide notice to interested parties. RCW 69.50.505. CP 740,742,743,745

WestNET also referred to itself as an “agency” that had probable cause to seize property as shown below:

The “**agency**” has shown that it had probable cause to seize the property. CP 740,742,745 .“Whereas WestNET appeared” CP 750-758

Due to the fact that WestNET has created a Drug Enforcement Agency,<sup>64</sup> called itself and Agency, functioned as an Agency WestNET is subject to the PRA outright as a state agency. WestNET’s arguments that the Kitsap County Prosecutor’s office made scriveners errors should have been stricken from the record and are inadmissible on the grounds of lack of personal knowledge.( ER 602.) Ione George did not write or generate

---

<sup>64</sup> Section 1 d of the WestNET interlocal agreement. CP 639

the documents in question and cannot testify to the mindset of the individuals who wrote or generated such documents and then appeared under oath at these proceedings as WestNET. The argument regarding scrivener's errors should be stricken from the record on the grounds that it is inadmissible evidence on the grounds of lack of personal knowledge. "A trial court may not consider inadmissible evidence when ruling on a motion for summary judgment."<sup>65</sup> CR 56(e); (Cano-Garcia v. King County, 168 Wn. App.223, 249, 277 P.3d 34 (2012), rev. denied, 175 Wn.2d 1010 (2012) *id* at 249.

**1. Lack of Personal Knowledge.**

Ione George's claims that the Kitsap County Prosecutor's office and others made scriveners errors for 12 years in filing documents for court appearances as WestNET, should have been stricken as inadmissible on the grounds of lack of personal knowledge. (ER 602.) Ione George did not write or generate the documents in question and cannot testify to the mindset of the individuals who wrote or generated such documents and then appeared under oath at these proceedings as WestNET. The argument regarding scrivener's errors should be stricken from the record on the grounds that it is inadmissible evidence on the grounds of lack of personal knowledge. "A trial court may not consider inadmissible evidence when

---

<sup>65</sup> The hearing appeared to be a continuation of the previous motion for summary judgment in that it requests arguments showing there are now genuine issues of material fact.

ruling on a motion for summary judgment.<sup>66</sup> CR 56(e); Cano-Garcia, 168 Wn.App. at 249. Materials offered in support of a summary judgment motion must meet the detailed requirements stated in CR 56(e): Supporting and opposing affidavits shall be made on personal knowledge, shall be admissible." Int'l Ultimate, Inc., v. St. Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 745, 87P.3d 774 (2004); see also ER 901(a); State v. Payne, 117 Wn. App. 99, 106, 69 P.3d 889 (2003).

"Because the proponent seeking to admit a document must make only a prima facie showing of authenticity, the requirement of authentication or identification is met if the proponent shows proof sufficient for a reasonable fact-finder to find in favor of authenticity." (see Int'l Ultimate, 122 Wn. App. at 745-46. CR 56(e) "requires some evidence which is sufficient to support a finding that 'the evidence in question is what its proponent claims it to be." *Id* at 746; see also ER 901 (a). Because the ruling and order rely on inadmissible evidence, the declarations of Ione George and Batrice Fredsti should be stricken by the trial court. There was plenty of time to get declarations from the persons writing these documents but the WestNET counsel just refused to comply with the rules

---

<sup>66</sup> The Settlement agreement and the terms of it were also presented without personal knowledge.

of evidence, and the trial court allowed WestNET counsel to dictate the rules of evidence.

**2. Hearsay is inadmissible.**

Hearsay is a statement, other than one made by the declarant, offered to prove the truth of the matter asserted. ER 801(c). Hearsay is generally inadmissible. ER 802. Inadmissible hearsay evidence cannot be considered in ruling on a motion for summary judgment. *Dunlap v. Wayne*, 105 Wn.2d 529, 535, 716 P.2d 842 (1986).

Ione George's statements on behalf of others do not meet any of the requirements of the hearsay exceptions<sup>67</sup> in ER 803 a 1, ER 804 b 1 or any other hearsay exception. Those hearsay statements should have been stricken.

**3. The Kitsap County Prosecutor is the responsible party.**

The argument put forth in the Defendant's RPC 3.3 d is self-serving and is cover for the statutory fact that the elected prosecutor is responsible for the actions of all deputy prosecutors. The elected prosecutor is responsible for the acts of the deputy prosecutors as shown below in RCW 37.24.040 which reads in relevant part:

**The prosecuting attorney shall be responsible for the acts of his or her deputies and may revoke appointments at will. VR 6**

---

<sup>67</sup> The circumstances and true terms of the settlement agreement were also hearsay statements.

Furthermore, RPC 5.1 contains language that also requires the “Supervisory Lawyers” to be responsible for subordinate lawyers.<sup>68</sup> The fact is, the elected prosecutors are solely responsible for the inconsistent arguments made to the courts claiming that WestNET legally existed, while simultaneously arguing that WestNET was a “non-entity.”.

While WestNET was arguing to all three levels of the court system that it was a non-entity, WestNET was physically appearing in court in order to collect fines and fees and to seize cash and property. Once the WestNET checks were cashed it very well may be an issue of organized crime and money laundering and the elected prosecutors should be held accountable, because the mens rea standard indicating the mental state of the alleged criminals have now been proven by the in court statements that WestNET knew was a non-entity while it portrayed itself as a state agency and legal entity.

---

<sup>68</sup> [1] [Washington revision] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0A (c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or **government agency**; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

As shown above, the Kitsap County Prosecutor was responsible for the acts of all his deputies,<sup>69</sup> and should have taken responsibility for the dual positions that WestNET legally existed while it was a non-entity and just a “collaborative agreement.”

**R. Worthington’s Rule 60 b Motion should have been granted.**

When Worthington provided the transcripts of the seizure forfeiture hearings, the scrivener’s error argument by WestNET should have been soundly overcome and defeated. The trial court erred when it refused to accept the transcript<sup>70</sup> as new evidence, because the motion to reconsider had already been filed and the trial court mistakenly ruled that Worthington could have obtained the transcripts prior to the filing of the motion to reconsider. Worthington had no idea the transcripts were available until after the motion to reconsider had been filed. (March 18, 2016. VR 9.)

**IV. CONCLUSION**

Worthington respectfully requests a ruling under seal of this court that WestNET is a legal Washington State Agency subject to the Washington State Public Records Act outright.

---


<sup>69</sup> March 18, 2016 VR 6.

<sup>70</sup> CP 1798-1824

Worthington also respectfully requests a ruling that he should not be required to resort to WestNET's unpublished PRA procedures, 6 years after the fact.

Worthington also respectfully argues the case should be remanded back to the trial court with orders to proceed with the penalty phase of the PRA and with orders to modify the WestNET interlocal agreement to comply with the terms and conditions of two state contracts and the requirements of the PRA under the definition state Board, Agency, Local Board, or other Public Agency.

Respectfully submitted this 4<sup>th</sup> day of August, 2016.

BY   
\_\_\_\_\_  
John Worthington /Appellant  
4500 SE 2<sup>ND</sup> PL.  
Renton WA.98059



**Declaration of Service**

I declare that on the date and time indicated below, I caused to be served  
Via email, and personal service a copy of the documents and pleadings  
listed below upon the attorney of record for the defendants herein listed  
and indicated below.

1. APPELLANT'S AMENDED OPENING BRIEF

IONE GEORGE/WESTNET  
614 Division Street MS-35A  
Port Orchard, WA 98366

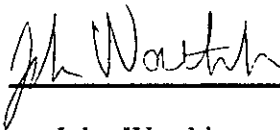
COA DIVISION II  
950 Broadway, Suite 300  
Tacoma, WA 98402

FILED  
COURT OF APPEALS  
DIVISION II  
2016 AUG 24 AM 9:10  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

I declare under penalty of perjury under the laws of the United States that  
the foregoing is True and correct.

**Executed** on this 47th day of August, 2016.

**BY**



John Worthington /Appellant  
4500 SE 2<sup>ND</sup> PL.  
Renton WA.98059